No. 87-583

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term 1987

RONALD KRILETICH
Petitioner,
vs.
COMMISSION ON JUDICIAL PERFORMANCE, et. al.,
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ALAMEDA, et. al.,
CITY OF HAYWARD, et. al.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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16 pp

QUESTIONS PRESENTED

Whether the secrecy statutes Article VI §18(f) of the California Constitution and California Rules of Court Rule 902(a) are unconstitutional. Whether the COMMISSION ON JUDICIAL PERFORMANCE owed the petitioner a ministerial duty under both California Rules of Court 904(a) and the 14th Amendment due process clause to investigate respondent state judges for acting inconsistent with the federal constitution. Whether the courthouse officials of the respondent state court and third parties acting in concert violated the petitioner's rights under the 14th Amendment to the United States Constitution. Whether the individual respondents of the CITY OF HAYWARD violated the petitioner's equal protection rights under the 14th Amendment.

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OPINIONS BELOW

The unreported opinion and judgment of the Court of Appeals for the Ninth Circuit, dated April 7, 1987, is printed in Appendix A, pp. A-2, A-3. The appellate order denying all of the petitioner's motions is printed in Appendix A, p. A-1.

JURISDICTION

The judgment of the court of appeals was filed and entered on April 7, 1987 (Appx. A, pp. A-2, A-3). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves Article VI § 18(f) of the California Constitution, California Rules of Court Rule 902(a) and 42 U.S.C. § § 1983, 1985 which are set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner, RONALD KRILETICH ("KRILETICH"), had two suits in the SUPERIOR COURT FOR THE STATE OF CALIFORNIA, ALAMEDA COUNTY where he appeared pro per from 1984-1985. During these suits KRILETICH encountered state judges who 1) entered orders against him without a notice[1], 2) denied him an opportunity to be heard[2], and 3) refused to perform their ministerial duties. Courthouse officials and attorneys also got involved in the foregoing.

KRILETICH mailed a number of written communications to the COMMISSION ON JUDICIAL PERFORMANCE ("COMMISSION") that requested a hearing on various respondent state judges acting contrary to the federal constitution. COMMISSION's written replies alleged no wrong doing among them and it further refused to investigate the communications consistent with California Rules of the Court Rule 904(a) (Appx. B, p. B-2). In one instance, KRILETICH asked the COMMISSION if a particular presiding judge ever mailed any written improprieties about any of his subordinate judges as provided by California Rules of Court Rule 244.5(a)(19) (Appx. B, p. B-2). COMMISSION refused to disclose any information in its files based on the two secrecy statutes (Appx. B, pp. B-1, B-2).

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[1]Adverse decree in Case H 101128-1 was entered on 11/9/84 although the state court originally continued the entire matter to 11/13/84. A piece-meal order dismissed 5 of 6 defendants in Case H 94778-1 without prejudice on February 28, 1985 with no hearing or minutes to account for it.

[2]Another adverse decree was entered against KRILETICH without giving him a hearing on a scheduled court date and despite nonappearance of opposing counsel.

While the state cases were in progress, KRILETICH tried to press criminal charges with the Hayward Police against a state clerk and certain lawyers for perjury and others for more serious crimes. Despite supporting evidence presented , Hayward Police refused to accept the charges.

On August 16, 1985, KRILETICH filed a 17-count civil rights complaint in district court. The court dismissed the case with prejudice on November 26, 1985, and also upheld the confidentiality of COMMISSION proceedings. On December 4, 1985, KRILETICH filed motions under FRCP 59(e) and 15(a) (Appx. B) to file an amended complaint. On December 9, 1985, district court entered an order that added another reason for dismissal. KRILETICH countered by filing a motion under FRCP 60(b)(4) (Appx. B, p. B-3) due to a lack of notice on the order. These and other motions were consolidated for hearing date of January 27, 1986. Without a hearing, on January 21, 1986, the district court denied all of KRILETICH's motions. KRILETICH appealed.

The court of appeals upheld the constitutionality of the secrecy statutes by denying KRILETICH's motion for declaratory relief (Appx. A, p. A-1) under 28 U.S.C. § § 2201, 2202 (Appx. B, p. B-1). This same order also denied his motions to declare certain state court orders void although no state court records were ever transferred for review. The appellate court then affirmed the district court's ruling an April 7, 1987, labelled the appeal as frivolous (Appx. A, pp. A-2, A-3), and made this determination without the benefit of the original district court record.

REASONS FOR GRANTING CERTIORARI

I. INTRODUCTION

This case presents questions of critical importance in upholding federally constitutional standards in both state courts and state agencies, which only this Court can finally resolve. No state should ever abdicate its responsibilities through neglect, secrecy, or otherwise from upholding the federal constitution. The public and the press, therefore, have standing under their First and Fourteenth Amendment rights 1) to allow COMMISSION records to stand as public record and 2) to have knowledge of and to attend hearings on state judges who are accused of unconstitutional conduct. The COMMISSION should have investigated rather than ignore

charges of federal violations against state judges. Furthermore, both state and state courts are not empowered to violate the U.S. Constitution. It was unlawful for the Hayward Police under the 14th Amendment to refuse to investigate crimes that are supported by evidence. Finally, the court of appeals erred in its final order.

II. ARTICLE VI § 18(f) OF THE CALIFORNIA CONSTITUTION AND CALIFORNIA RULES OF COURT RULE 902(a) ARE UNCONSTITUTIONAL

A. Both the public and the press should have access to COMMISSION records as public record.

An "open judicial process" under the First Amendment provides that the people "retain the necessary means of control over their institutions..." *Richmond Newspapers, Inc. v. Virginia* 448 U.S. 555,593 Justice J. Brennan concurring. In retrospect, "the public has the right to be informed as to what occurs in its courts..." *Estes v. Texas* 381 U.S. 532, 541-542 since court activities are "public property" *Craig v. Harney* 331 U.S. 367, 374. Any complaints received by the COMMISSION from the public infers a *public interest* on *public matters.* The right to "receive information and ideas" *Kleindienst v. Mandel* 408 U.S. 753, 762 under the First Amendment also includes making and having knowledge of "sharp attacks on government and public officials." *New York Times v. Sullivan* 376 U.S. 254, 270. The state's contention that confidentiality encourages the filing of more complaints with the COMMISSION and prevents exposure of unfounded charges merely constitutes "undifferentiated fear and apprehension" that this Court has already viewed as insufficient to abridge First Amendment rights. *Tinker v. Des Moines Independent Comm. School Dist.* 393 U.S. 503, 508. Finally, allowing COMMISSION records as public record provides for "public scrutiny of the operations of a judicial disciplinary body implicates a major purpose of the First Amendment — 'discussion of governmental affairs'." *Richmond,* supra at 592.

B. Both the public and the press should have knowledge of and be allowed to attend judicial disciplinary hearings.

With the well-known "traditional Anglo-American distrust for secret trials," *In re Oliver* 333 U.S. 257, 268, there is no real

assurance that the guilty are being punished or the innocent being acquitted. "Closed trials breed suspicion of prejudice and arbitrariness..." *Richmond,* supra at 595. Since the secrecy statutes permit secret hearings with no attempt to accomodate the rights of orderly reporters and other observers, such participation is necessary to influence the tribunal's determination. See gen. *Carroll v. President, Comm'rs of Princess Anne* 393 U.S. 175, 183-184. There is no showing or finding of any state interest sufficient enough to outweigh the constitutional rights of both press and public. This is important because the "integrity of the judicial system and public confidence in the system depend on full disclosure." *U.S. v. Nixon* 418 U.S. 682, 709.

III. THE COMMISSION OWED KRILETICH A DUTY TO INVESTIGATE CERTAIN STATE JUDGES FOR FEDERAL VIOLATIONS

KRILETICH's written communications to the COMMISSION described instances where certain state judges either proceeded without jurisdiction or breached their ministerial duties. This Court has already determined judicial liability for such respective acts. *Stump v. Sparkman* 435 U.S. 349, 356-357; *Ex parte Virginia* 100 U.S. 339, 348. This Court also added that a public official "should not escape liability for the injuries he may so cause..." *Barr v. Matteo* 360 U.S. 564, 571. However, the court of appeals in its final order erred by classing such torts by judges as acts "in their judicial capacity" and hence erroneously conferred judicial immunity.

There is no legitimate state interest for the COMMISSION to ignore repeated federal violations among state judges by refusing to investigate as provided by California Rules of Court Rule 904(a)(Appx. B, p. B-2). State courts were created to uphold the U.S. Constitution — not violate it. The written communications, therefore, had standing to warrant a COMMISSION investigation as due process under the 14th Amendment.

IV. THE STATE COURT IGNORED ITS OBLIGATION TO UPHOLD THE UNITED STATES CONSTITUTION

State courts are not authorized "to violate the supreme law of the land." *Kalb v. Feuerstein* 308 U.S. 433, 439. KRILETICH's right to a notice and to an opportunity to be heard should have been

respected and were not. *Old Wayne Life Assn. v. McDonough* 204 U.S. 8, 17. The resulting state court orders were void and reviewable, because "where there has been a deprivation of a federally guaranteed right that the federal courts will intervene to review the determination of the courts of the state." *O'Connor v. O'Connor* 315 F.2d 420, 422 (5th Cir.). However, the 5th Circuit's opinion appears to conflict with the 9th Circuit's non-transfer and non-review of the two, original state court case records.

Finally, the state clerks lost their immunity to suit under § 1983 when they failed to file and docket KRILETICH's papers[3]. *McCray v. State of Maryland* 456 F.2d 1, 4 (4th Cir.). The 4th Circuit's decision hence stands in conflict with the 9th Circuit's determination in § 1983 actions against state clerks for ministerial breaches of duty.

V. THE HAYWARD POLICE ARE REQUIRED TO INVESTIGATE CRIMES — NOT IGNORE THEM

No police agency has the power to play judge and jury in refusing to investigate crimes because it is the judiciary "to say what the law is." *Marbury v. Madison* 20 L. Ed. 60, 73. Along with supporting evidence to the crimes reported, "no agency of the state... shall deny to any person within its jurisdiction the equal protection of the laws." *Ex parte Viginia* 100 U.S. 339, 347.

VI. THE COURT OF APPEALS ERRED IN ITS FINAL DETERMINATION

A. The appeal was not frivolous. The constitutionality of the secrecy statutes was critical then and remains critical even now where only this Court can finally settle that issue.

B. The appellate court judgment did not even consider the three district court orders entered against KRILETICH (Appx. A, pp. A-2, A-3) without a notice and with no opportunity to argue against them. These are due process violations under the 14th Amendment.

C. Denying KRILETICH an opportunity to be heard at the court of appeals was also improper. All appellate parties to the record "must be given an opportunity to be heard on such appeal." *Davis v. Mercantile Trust Co.* 152 U.S. 590, 593.

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[3]A private investigator's report in the district court case file documents the said phenomena among the state clerks.

D. A final determination was made without the benefit of the district court record. This is inconsistent with normal procedure under FRAP Rule 11(b) (Appx. B, p. B-2) before a final appellate order is entered.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

RONALD KRILETICH
Counsel of Record
In Propria Persona

APPENDIX A

RONALD KRILETICH, Plaintiff-Appellant
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants-Appellees

No. 86-1737
No. 86-1736

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No Hearing or Argument
Filed: July 25, 1986

Appeal from the United States District Court
for the Northern District of California

Before FARRIS, PREGERSON, and WIGGINS, Circuit Judges

ORDER

All of appellant's pending motions are denied. Appellant is cautioned that the filing of additional frivolous motions may lead to the imposition of sanctions, including substantial financial penalties. Should appellant submit any additional papers, with the exception of a reply brief, the Clerk will lodge the papers for such consideration as the panel examining the merits of the appeals deems appropriate.

Appellant's opening brief and the briefs of appellees previously received will be filed. Any other appellees may file a brief within 28 days of the entry of this order.

The clerk will consider these appeals ripe for submission after 42 days from the entry of this order have passed.

RONALD KRILETICH, Plaintiff-Appellant
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants-Appellees

No. 86-1736
No. 86-1737

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No Hearing or Argument
Entered: April 7, 1987

Appeal from the United States District Court
for the Northern District of California

Before GOODWIN, KENNEDY, and CANBY, Circuit Judges

JUDGMENT

Ronald Kriletich sued the California Commission on Judicial Performance, various judges, attorneys, court reporters, police officers, and others in a 226-page complaint describing grievances related to some private litigation in the state courts. He claimed that the defendants had deprived him of his federal constitutional rights under color of state law. The district court dismissed the complaint with prejudice and Kriletich appeals. We affirm, and impose costs and attorney fees as sanctions for a frivolous appeal.

The state of mind of a litigant may be a partial defense to a claim for damages based upon malicious abuse of process, but regardless of state of mind, there is no free license to impose upon the courts, the other parties, and their resources, the vexation and costs of groundless litigation. This federal litigation is wholly groundless. We express no opinion on the merits of the plantiff's state court litigation.

The judicial officers sued in this case were immune from liability under 42 U.S.C. § 1983 and 1985 because all of their actions were taken or forborne in their judicial capacity. The police officers who refused to arrest the plantiff's relatives on his complaints charging them with perjury did not violate any of the plantiff's federal constitutional rights. The municipal government of Hayward in hiring and training the police officers who refused to make the desired arrests did not violate any of the plaintiff's federal constitutional rights. The state commission of judicial performance in refusing to punish the judges whose judicial work the plaintiff found wanting did not violate any of the plaintiff's federal constitutional rights. None of the other defendants named in the plaintiff's complaint violated any federally protected rights under color of state law. The district court searched through the plaintiff's papers in a good faith effort to find some allegation of facts that would state a claim under the relevant statutes, and found none. We have likewise found no basis for a claim.

Costs will be awarded to the appellees upon filing of a timely bill. In addition, the sum of $1,500 is awarded to the appellees for their attorney's fees on this appeal.

AFFIRMED.

APPENDIX B

Statutes

Article VI § 18(f) of the California Constitution: The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

28 U.S.C. § 2201: In the case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2202: Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985 (in pertinent part): If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons to the equal protection of the laws, or of equal privileges and immunities under the laws ... whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Rules

California Rules of Court Rule 244.5(a)(19) (in pertinent part): Except as otherwise provided by subdivision (b), the presiding judge shall notify the Commission on Judicial Performance of a judge's substantial failure to perform judicial duties, including any habitual neglect of duty, or any absence, due to disability totaling more than 90 court days in a 12-month period...

California Rules of Court Rule 902(a): Except as provided in this rule , all papers filed with and proceedings, before the Commission, or before the masters appointed by the Supreme Court pursuant to rule 907, shall be confidential until a record is filed by the Commission in the Supreme Court.

California Rules of Court Rule 904(a): The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of wilful misconduct in office, persistent failure or inability to perform his duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that he has a disability that seriously interferes with the performance of his duties and is or is likely to become permanent, or that he has engaged in an improper action or a dereliction of duty, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. The Commission without receiving a verified statement may make a preliminary investigation on its own motion.

Federal Rules of Appellate Procedure Rule 11(b)(in pertinent part): When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness.

Federal Rules of Civil Procedure Rule 15(a): A party may amend his pleading once as a matter of course at any time before a responsive is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

Federal Rules of Civil Procedure Rule 59(e): A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Federal Rules of Civil Procedure Rule 60(b)(4): On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: the judgment is void.